

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DC3 ENTERTAINMENT, LLC, a Washington
limited liability company,

Plaintiff and Counterclaim Defendant,

v.

JOHN GALT ENTERTAINMENT, INC., a
California corporation; DAVID
KERSHENBAUM and TIMMI DEROSA
KERSHENBAUM, husband and wife and the
marital community composed thereof,

Defendants and Counterclaim Plaintiffs.

JOHN GALT ENTERTAINMENT, INC., a
California corporation; DAVID
KERSHENBAUM and TIMMI DEROSA
KERSHENBAUM, husband and wife and the
marital community composed thereof,

Third-Party Plaintiffs,

v.

JONATHAN PHELPS and ESTHER PHELPS,
husband and wife and the marital community
composed thereof,

Third-Party Defendants.

CASE NO. C04-2374C

ORDER

1 This matter comes before the Court on Plaintiff's and Third-Party Defendants' Motion to
2 Preclude Defendants' Expert Testimony (Dkt. No. 161); Defendants' Opposition (Dkt. No. 172);
3 Plaintiff's and Third-Party Defendants' Reply (Dkt. No. 191); and Defendants' Supplemental Opposition
4 (Dkt. No. 201). The Court has considered all of the papers submitted regarding the motion and
5 determined that oral argument is not necessary.

6 The Court hereby DENIES the motion for the following reasons: (1) Defendants began their
7 disclosure before the November 8, 2005 expert disclosure deadline and represented that they intended to
8 make their disclosure complete as soon as possible by providing the expert report; (2) Defendants'
9 subsequent late provision of their expert report rendered their expert disclosure complete by November
10 29, 2005, which was before the instant motion became ripe for consideration on December 2, 2005; and
11 (3) The "late" report—which does not even constitute a "failure" to disclose Rule 26(a) information
12 within the meaning of Federal Rule of Civil Procedure 37(c)(1) because disclosure is now
13 complete—while frustrating, is nevertheless also harmless within the meaning of Rule 37(c)(1) on these
14 facts, even if late completion of an expert disclosure *could* be construed as a "failure" to disclose.

15 The Court trusts that the parties will work out an appropriate schedule, if they have not done so
16 already, to disclose rebuttal experts, if any, and conduct expert depositions in light of Defendants' expert
17 disclosure.

18
19 SO ORDERED this 4th day of January, 2006.

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21 

22 John C. Coughenour

23 United States District Judge